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October 30, 2017

BY ECF AND HAND DELIVERY

The Honorable William H. Pauley III
United States District Court
Southern District of New York
500 Pearl Street, Room 1920
New York, NY 10007

Re: *United States v. Prevezon Holdings, Ltd., et al.*, 13 Civ. 6326 (WHP)

Dear Judge Pauley,

The Government writes to update the Court on the status of the settlement in the above-referenced matter and to respectfully request that the Court set a pre-motion conference, or simply a briefing schedule, for the Government to file a motion to enforce the obligations of the settlement agreement against defendant Prevezon Holdings (“Prevezon”). Prevezon’s \$5,896,333.65 payment is due on October 31, 2017 under the terms of the settlement agreement. Prevezon has indicated, however, that it may refuse to pay by the October 31 deadline.

Pursuant to the Settlement Agreement, the Government was required to request that the Government of the Netherlands “lift the restraint of the AFI Europe Debt [a debt of 3,068,946 Euros owed by AFI Europe N.V. to Prevezon Holdings] that had been implemented at the request of the United States.” Settlement Agreement (Docket Item (“D.I.”) 716) ¶ 3. Prevezon Holdings’ payment of \$5,896,333.65 was due “within 15 business days of the release by the Government of the Netherlands of the AFI Europe Debt.” Settlement Agreement ¶ 4. The Government duly made its request of the Government of the Netherlands, which lifted the U.S.-requested restraint on the AFI Europe Debt on October 10, 2017. Accordingly, Prevezon is required to make the payment by October 31, 2017.

Upon releasing the restraint on the AFI Europe Debt, the Government of the Netherlands seized it in connection with a separate investigation by Netherlands authorities. Prevezon has advised the Government that, in light of the seizure, it may refuse to make the required payment as due, and has requested extra time for its owner to “consider his options,” including a possible motion to relieve Prevezon of its payment obligation. If, as appears likely, Prevezon fails to make its timely payment on October 31, the Government intends to file a motion seeking enforcement—including appropriate relief for late payment. The Government thus respectfully requests that the Court set a pre-motion conference for this motion or, to resolve this matter expeditiously, simply set a schedule for this anticipated motion and any cross-motion Prevezon may seek to file.

I. The AFI Europe Debt and the Settlement Agreement

As part of this action, the Government sought to forfeit the AFI Europe Debt. The Netherlands authorities initially restrained the AFI Europe Debt at the request of the Government on January 22, 2014 in connection with this case, *see* D.I. 381 ¶ 142 (Second Amended Complaint), and it has been frozen under first the Protective Order, D.I. 2, and then the Amended Protective Order, D.I. 173, pending resolution of this action.

The Settlement Agreement, approved by the Court on May 15, 2017, provided that the Government would request that the Netherlands authorities release the AFI Europe Debt from the restraint imposed in this case. *See* Settlement Agreement ¶ 3. Following the release of this debt, Prevezon was then obligated to make the \$5,896,333.65 settlement payment to the Government within 15 business days, Settlement Agreement ¶ 4, after which the other property restrained in this case (approximately \$10 million in domestically restrained assets) would be released and the action dismissed, Settlement Agreement ¶ 11.

Following the Court's approval of the Settlement Agreement, the Government made the requisite request that the Netherlands authorities lift the restraint they had imposed on the AFI Europe Debt in connection with this case. On October 10, 2017, the Netherlands authorities granted that request, lifting the restraint they had imposed in connection with this case. That same day, however, the Netherlands authorities seized the AFI Europe Debt based on their own independent investigation of Prevezon for money laundering, which relates to similar subject matter to this case.¹ The Government did not request this seizure, the Netherlands authorities did not seek, or require, the Government's approval, and it is not part of or dependent on this action or the previous U.S-requested restraint, which has been fully released.

Accordingly, Prevezon Holdings is obligated to make the settlement payment on October 31, 2017, which is 15 business days after the October 10, 2017 release.

II. Prevezon's Apparent Intent Not to Pay Timely Under the Settlement Agreement

The Government informed Prevezon of the release and subsequent seizure of the AFI Europe Debt on October 10, 2017, immediately after having been advised by the Netherlands that they had taken place. In discussions with counsel for the Government, counsel for Prevezon has not confirmed Prevezon's willingness to make the required payment by October 31, 2017, or indeed at all. Instead, they have stated that Prevezon's owner needs more time to "consider his options" and requested that the Government either agree that no payment deadline has been triggered, or else consent to extend the payment deadline until November 15, 2017. Counsel for Prevezon has also suggested that it may file a motion seeking some sort of relief from Prevezon's obligation to timely pay.

¹ The possibility that Netherlands authorities—who were not parties to the Settlement Agreement—might decide to seize the AFI Europe Debt after releasing it from this case was contemplated by the parties as far back as 2015.

As set forth above, the Government's view is that the payment deadline has been triggered and Prevezon's payment is due on October 31, 2017. The Government does not believe that any of the grounds for a motion suggested by Prevezon's counsel has any merit. The Government also does not believe that Prevezon needs additional time to consider its options, as the language and drafting history of the Settlement Agreement are straightforward on this point. Indeed, as far back as 2015, the parties contemplated the possibility that the Netherlands government might seize the AFI Europe Debt. Thus, the three-week period since Prevezon was advised of the Dutch seizure was plainly sufficient to allow Prevezon to review and comply with the Settlement Agreement.

Accordingly, the Government intends to file a motion to enforce the Settlement Agreement against Prevezon should it fail to pay on October 31, and respectfully requests that the Court either schedule a pre-motion conference or, in the interests of expeditious resolution of such issues, set a schedule for its motion—and any cross-motion Prevezon may wish to file—as follows:

1. Any motions due November 15, 2017.
2. Oppositions due November 27, 2017
3. Replies due December 4, 2017

The Government respectfully submits that such a schedule will allow the Court to swiftly address issues that will arise should Prevezon decide not to make the settlement payment timely and in full.

Respectfully submitted,

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cc: Counsel of Record (via ECF)